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 18 VISTAN CORPORATION

19 **UNITED STATES DISTRICT COURT**

20 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

21 VISTAN CORPORATION,
 22 Plaintiff,

23 v.
 24 FADEI USA, INC., PAN AMERICAN
 25 ENGINEERING and EQUIPMENT CO.,
 26 INC., MANUEL SILVA, and MARIANI
 27 PACKING CO., INC.,

28 Defendants.

CIVIL ACTION
 NO. 10-4862 JCS

29 **STIPULATION AND [PROPOSED]
 30 ORDER GRANTING PLAINTIFF
 31 LEAVE TO AMEND ITS
 32 INFRINGEMENT CONTENTIONS
 33 AND GRANTING DEFENDANTS
 34 LEAVE TO AMEND THEIR
 35 INVALIDITY CONTENTIONS**

36 FADEI USA, INC., PAN AMERICAN
 37 ENGINEERING and EQUIPMENT CO.,
 38 INC., MANUEL SILVA, and MARIANI
 39 PACKING CO., INC.,
 40 Counterclaimants,

41 v.
 42 VISTAN CORPORATION,

43 Counterdefendant.

1 Plaintiff Vistan Corporation ("Plaintiff") and defendants Fadei USA, Inc., Pan
 2 American Engineering and Equipment Co., Inc., Manuel Silva, and Mariani Packing Co.,
 3 Inc. ("Defendants"), by and through their undersigned counsel, hereby stipulate and agree
 4 to serve Amended Preliminary Infringement Contentions and Amended Preliminary
 5 Invalidity Contentions as follows:

6 WHEREAS this is a patent infringement lawsuit in which Vistan Corporation
 7 asserts that the named defendants infringe United States Patent No. 5,870,949;

8 WHEREAS the Court issued a Claim Construction Order on April 27, 2012;

9 WHEREAS the Court construed the claim term "active assembly" as a means-plus-
 10 function limitation pursuant to 35 U.S.C. § 112, ¶ 6;

11 WHEREAS the Court issued constructions of the terms "pitting" and "pitting
 12 operation" that were different from the constructions proposed by Defendants;

13 Whereas Local Patent Rule 3-6(a) permits Infringement and Invalidity Contentions
 14 to be amended upon a timely showing of good cause after the court enters a claim
 15 construction that is different from that proposed by the party seeking the amendment;

16 WHEREAS Plaintiff provided Defendants with proposed amendments to its
 17 Preliminary Infringement Contentions as set forth in redline format in Exhibit A on May
 18 24, 2012;

19 WHEREAS Plaintiff's proposed amendments address the Court's construction of the
 20 term "active assembly" and Plaintiff seeks leave to serve those amendments pursuant to
 21 Local Patent Rule 3-6(a);

22 WHEREAS Defendants provided Plaintiff with proposed amendments to its
 23 Preliminary Invalidity Contentions as set forth in Exhibit B on June 22, 2012;

24 WHEREAS Defendants proposed amendments address the Court's construction of
 25 the terms "active assembly", "pitting", and "pitting operation", and Defendants seek leave
 26 to serve those amendments pursuant to Local Patent Rule 3-6(a);

27 WHEREAS Plaintiff and Defendants agree that the amended contentions attached
 28 hereto as Exhibit A and B may properly be served pursuant to Rule 3-6(a) and request an

1 order permitting such amendments to be served pursuant to that rule;

2 WHEREAS the Defendants intend within the next 30 days to seek further leave to
3 amend their invalidity contentions to update claim charts pursuant to Patent L.R. 3-3(c) to
4 identify the Court's construction of the term "active assembly" by identifying
5 corresponding structure and function in the prior art and to identify additional prior art
6 containing corresponding structure and function with regard to the Court's construction of
7 "active assembly" within the same time period; and

8 WHEREAS Plaintiff does not agree that such further amendment is or will be
9 proper pursuant to the Local Patent Rules and reserves all rights to oppose and/or move to
10 strike any additional amendments to Defendants' invalidity contentions on any recognized
11 basis;

12 NOW, THEREFORE, IT IS HEREBY STIPULATED by and between Plaintiff and
13 Defendants as follows:

14 Plaintiff is hereby granted leave to amend its Preliminary Infringement Contentions
15 in the form of its Amended Infringement Contentions which are attached hereto as Exhibit
16 A and previously provided to Defendants on May 24, 2012;

17 The Defendants are hereby granted leave to amend their Preliminary Invalidity
18 Contentions in the form of its First Amended Invalidity Contentions which is attached
19 hereto as Exhibit B, and previously provided to Plaintiff on June 22, 2012.

20 The Amended Infringement Contentions attached hereto as Exhibit A and the
21 Amended Invalidity Contentions attached hereto as Exhibit B are deemed served as the
22 date of entry of this Order.

23 This Order does not rule on the propriety of any further amendments to the
24 Preliminary Infringement Contentions or the Preliminary Invalidity Contentions, including
25 those proposed by the Defendants, and the propriety of any further amendments shall be

26 ///

27 ///

28 ///

1 addressed if and when it becomes necessary.

2
3 IT IS SO STIPULATED:

4
5 DATED: June 28, 2012

HANSON BRIDGETT LLP

6
7 By: /s/ Robert A. McFarlane
8 ROBERT A. MCFARLANE
9 Attorneys for Plaintiff / Counterdefendant
10 VISTAN CORPORATION

11 DATED: June 28, 2012

DOWNEY BRAND LLP

12
13 By: /s/ Michael Thomas
14 MICHAEL THOMAS
15 Attorneys for Defendants / Counterclaimants
16 FADEI USA, INC., PAN AMERICAN
17 ENGINEERING and EQUIPMENT CO.,
18 INC., MANUEL SILVA, and MARIANI
19 PACKING CO., INC.

20 GOOD CAUSE APPEARING THEREFORE, IT IS SO ORDERED.

21
22 DATED: _____, 2012

23 _____
24 Honorable Joseph C. Spero